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30 **JOINT LIMITED OPPOSITION BY THE FUND COMMITTEES TO DEBTORS'  
31 MOTION FOR ORDER APPROVING CONTINUED USE OF CASH THROUGH JULY  
32 29, 2006 PURSUANT TO SECOND REVISED BUDGET (AFFECTS ALL DEBTORS)**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.	)	BK-S-06-10725-LBR Chapter 11
In re: USA CAPITAL REALTY ADVISORS, LLC, Debtor.	)	BK-S-06-10726-LBR Chapter 11
In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, Debtor.	)	BK-S-06-10727-LBR Chapter 11
In re: USA CAPITAL FIRST TRUST DEED FUND, LLC, Debtor.	)	BK-S-06-10728-LBR Chapter 11
In re: USA SECURITIES, LLC, Debtor.	)	BK-S-06-10729-LBR Chapter 11

**JOINT LIMITED OPPOSITION BY THE FUND COMMITTEES TO DEBTORS'  
MOTION FOR ORDER APPROVING CONTINUED USE OF CASH THROUGH JULY  
29, 2006 PURSUANT TO SECOND REVISED BUDGET (AFFECTS ALL DEBTORS)**

1 **TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

2                   In response to the "Motion for Order Approving Continued Use of Cash Through  
 3 July 29, 2006 Pursuant to Second Revised Budget" (the "Cash Management Motion")<sup>1</sup>, filed by  
 4 USA Commercial Mortgage Company ("USACM"), on behalf of itself and its affiliated debtors  
 5 (each, a "Debtor" and, collectively, the "Debtors"), the Official Committee of Equity Security  
 6 Holders of USA Capital First Trust Deed Fund, LLC (the "First Trust Deed Committee") and the  
 7 Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund,  
 8 LLC (the "Diversified Trust Deed Committee" and, together with the First Trust Deed  
 9 Committee, the "Fund Committees"), hereby file this limited opposition ("Limited Opposition")  
 10 and state as follows:

11                   Generally speaking, the Fund Committees do not oppose the Debtors' requested  
 12 use of cash through the week ending July 29, 2006. However, the Second Revised Budget that  
 13 the Debtors filed with the Court on June 9, 2006 raises numerous concerns and contains new line  
 14 items that directly affect the interests of the Debtors' investors, direct lenders and creditors.

15                   A.    **Collection of Pre-Paid Interest, Interest Earned on the Collection Account,  
 16 and Loan Origination Fees.**

17                   The Debtors have already obtained the Court's approval to use cash collateral  
 18 through July 13, 2006. While the Cash Management Motion appears at first blush to simply  
 19 extend the use of cash collateral for an additional two weeks, through July 29, 2006, it is  
 20 important to note that the Second Revised Budget does not merely extend the use of cash  
 21 collateral from the existing budget by an additional two weeks. Instead, it completely recasts the  
 22 entire budgeted use of cash by the Debtors from May 28, 2006 to July 29, 2006.

23                   For example, the Second Revised Budget now contains two new line items  
 24 titled "Collection of Pre-Paid Interest from Borrowers" and "Interest Income from Collections  
 25 Account," respectively. See Second Revised Budget, p.1. Over the course of the 13-week  
 26 period, the Debtors assume that they will be able to collect approximately \$16.4 million in

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27  
 28 <sup>1</sup> Terms not otherwise defined herein shall have the same meanings ascribed to them in the  
 Cash Management Motion.

1 interest from borrowers that the Debtors assert had been previously paid to investors, including  
 2 \$10,308,800 in such receipts for the week ending June 11, 2006 and approximately \$1 million in  
 3 interest earned on the Collections Account. According to the Second Revised Budget, both of  
 4 these amounts will be held in the Debtors' DIP Operating Account, from which the Debtors will  
 5 pay their business and administrative expenses.

6 While the Debtors fail to explain any of this in their Cash Management Motion,  
 7 the Fund Committees understand that the Debtors assert that the "re-payment" of pre-paid  
 8 interest is property of the Debtors' estate. There is simply no basis for this allegation. Without  
 9 providing any evidentiary support, the Debtors claim that the interest that was improperly  
 10 advanced pre-petition to the Debtors' investors was allegedly sourced, in part, from funds in  
 11 which no other investor had an interest, and therefore, to the extent that the Debtors collect any  
 12 of this so-called "pre-paid" interest, at least part of it belongs to the Debtors' estates. Until the  
 13 Debtors complete their forensic accounting and provide all parties in interest an opportunity to  
 14 review such accounting, it is simply premature to determine what extent, if any, the Debtors'  
 15 interests are in the repayments of "pre-paid" interest.

16 In addition, it is not clear if the interest earned on the Collections Account  
 17 belongs to the Debtors' estates rather than the Debtors' investors. Since the Debtors have  
 18 withheld payments to the Debtors' investors, shouldn't the interest earned on these "held-back"  
 19 payments be paid over to the rightful investor?

20 The Debtors cannot wholesale re-characterize the collection of interest payments  
 21 and interest earned on the Collections Account by simply adding new line items in the Second  
 22 Revised Budget. Absent a further court order, no interest collected on behalf of the Debtors'  
 23 investors nor interest earned on the Collections Account should be used to pay the Debtors'  
 24 operating expenses. Therefore, none of these funds collected should be placed in the Debtors'  
 25 DIP Operating Account. All money collected in connection with the loans that the Debtors  
 26 brokered should be placed in the Collections Account and accounted for on a loan-by-loan basis.

27 The Second Revised Budget also assumes that the Debtors will be originating  
 28 new loans, pursuant to which the Debtors anticipate collecting \$900,000 in loan origination fees.

1 While the fees are projected to be collected the day after the requested approval period, the Fund  
 2 Committees question whether the Debtors will be able to originate new loans and does not  
 3 believe it is appropriate for the Debtors to assume that they will generate \$900,000 in loan  
 4 origination fees by the end of July, 2006.

5 Accordingly, the Fund Committees request that the Debtors be required to amend  
 6 their Second Revised Budget by (i) placing the collection of all interest and principal payments  
 7 in the Collections Account and accounting for such sums on a loan by loan basis, (ii) keeping all  
 8 earned interest from the Collections Account in the Collections Account and (iii) deleting the  
 9 reference to the collection of the loan origination fees. Even excluding these amounts from the  
 10 Second Revised Budget, the Fund Committees note that sufficient monies are available in the  
 11 DIP Operating Account to pay the amounts budgeted through the week ending July 29, 2006.

12 **B. Payments to Investors.**

13 At the hearing held on June 5, 2006, the Debtors indicated that they would begin  
 14 making distributions to investors at the end of July. In a press release dated June 13, 2006, the  
 15 Debtors announced that they would seek to resume regular payments to investors in August  
 16 2006. Despite these proclamations, nothing in the Second Revised Budget, which runs through  
 17 the end of August, provides for payments to investors. While this does not directly impact the  
 18 Debtors' use of cash through the end of July, it does, however, demonstrate that the Second  
 19 Revised Budget is incomplete and needs to be updated.

20 **C. Professional Fees.**

21 The Second Revised Budget includes accruals of payments on behalf of various  
 22 professionals of the Debtors' estates. The professional amounts set forth in the Second Revised  
 23 Budget are solely projected accruals, and the amounts should not be deemed approved because  
 24 they have been included therein.

25 In addition, the Debtors have estimated the accrual of certain amounts by the  
 26 professionals of the various committees. The accrual amounts have not been discussed with the  
 27 Fund Committees or, most likely, with any other Committee. The Fund Committees believe that  
 28 the budgeted amounts may not be accurate and reserve the right to provide amended budgeted

1 amounts and seek compensation that varies with the amounts contained in the Second Revised  
2 Budget.

3 **WHEREFORE**, the Fund Committees request that the Court approve the  
4 Debtors' Cash Management Motion and Second Amended Budget, as modified herein.

5 Respectfully submitted this 14TH day of June, 2006.  
6

7 SUBMITTED BY:

8 OFFICIAL COMMITTEE OF EQUITY  
9 SECURITY HOLDERS OF USA CAPITAL  
10 FIRST TRUST DEED FUND, LLC

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